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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 394

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF CLAIMS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

CHRYSLER CORPORATION,
Petitioner,

against

THE UNITED STATES,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Claims in the above-entitled case.

Opinion Below

The order of the Court of Claims dismissing petitioner's petition along with those of Philco Corporation and Whirlpool-Seeger Corporation is printed herewith as Appendix B. No separate opinion was rendered herein by the Court of Claims.

Jurisdiction

The judgment of the Court of Claims which petitioner requests this Court to review was entered on April 17, 1959. By an order dated July 17, 1959, Mr. Justice Hugo L. Black,

granted petitioner an extension of time within which to file its petition for a writ of certiorari to and including September 14, 1959. Jurisdiction of this Court is invoked under 28 U. S. C., § 1255(1).

Question Presented

Petitioner claims refund of manufacturers' excise taxes in the aggregate amount of $5,344,864.48, plus interest under the provisions of section 3443(a)(2) of the Internal Revenue Code of 1939 and section 6416(b)(1) of the Internal Revenue Code of 1954. The suit is for refund of taxes paid under section 3403 of the Internal Revenue Code of 1939 and section 4061 of the Internal Revenue Code of 1954. The amount sought to be recovered represents that portion of the manufacturers' excise tax paid under said sections 3403 and 4061 on sales of automotive vehicles and equipment made by petitioner which is attributable to cash payments made and credit granted to petitioner's vendees during the period April 16, 1950 to December 31, 1955. The payments and credits represent both adjustments relating to petitioner's obligations to its vendees under its express warranty and voluntary adjustments under petitioner's policy relating to claims which are made after expiration of the express warranty.

The question presented is:

Are the cash payments made and credits granted by petitioner to its vendees price readjustments by means of discounts, rebates or allowances within the meaning of section 3443(a)(2) of the 1939 Code and section 6416(b)(1) of the 1954 Code thereby entitling petitioner to a refund of a proportionate part of the total tax paid based on the original sales price.

Statutes and Regulations Involved

Internal Revenue Code of 1939:

"SEC. 3403. TAX ON AUTOMOBILES, ETC.

"There shall be imposed upon the following articles sold by the manufacturer, producer, or importer, a tax equivalent to the following percentages of the price for which so sold:

"(a) Automobile truck chassis, automobile truck bodies, automobile bus chassis, * * * tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer (including in each of the above cases parts or accessories therefor sold on or in connection therewith or with the sale thereof), 8 per centum. * * *

"(b) OTHER CHASSIS AND BODIES, ETC. Other automobile chassis, and bodies, * * * (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, 10 per centum. * * *

"(c) Parts or accessories * * * for any of the articles enumerated in subsection (a) or (b), 8 per centum. * * *

"(26 U. S. C. 1952 ed., Sec. 3403.)

"SEC. 3441. SALE PRICE.

"(a) In determining, for the purposes of this chapter, the price for which an article is sold, there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is

established to the satisfaction of the Commissioner, in accordance with the regulations.

"(b) If an article is—

"(1) sold at retail;

"(2) sold on consignment; or

"(3) sold (otherwise than through an arm's-length transaction) at less than the fair market price;

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Commissioner.

* * * *

"(26 U. S. C. 1952 ed., Sec. 3444.)

"SEC. 3443. CREDITS AND REFUNDS.

"(a) A credit against tax under this chapter, or a refund, may be allowed or made—

* * *

"(2) to any person who has paid tax under this chapter with respect to an article, when the price on which the tax was based is readjusted by reason of return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance; in the amount of that part of the tax proportionate to the part of the price which is refunded or credited.

* * * * *

"(26 U. S. C. 1952 ed., Sec. 3443.)"

The relevant provisions of the Internal Revenue Code of 1954, which do not differ materially from those of the 1939 Code, are set forth in Appendix A together with the pertinent regulations.

Statement

Petitioner, Chrysler Corporation, is a Delaware corporation, with its office and principal place of business in Detroit, Michigan. It is engaged primarily in the manufacture and sale of automotive vehicles and equipment. A tax is imposed on the sale of these products pursuant to the provisions of Section 3403 of the 1939 Code and Section 4061 of the 1954 Code.

Petitioner extends an express warranty to its dealers and distributors for each of the automotive vehicles purchased by them. Petitioner does not extend a warranty to the ultimate purchaser of the vehicle though it is customary for dealers to provide a warranty to their customers similar in terms to the one extended by the manufacturer.

During the period April 16, 1950 to December 31, 1955 the terms of the express warranty which petitioner uniformly extended to its dealers and distributors were as follows:

> "The Manufacturer warrants each new motor vehicle manufactured by it to be free from defects in material and workmanship under normal use and service, its obligation under this warranty being limited to making good at its factory any part or parts thereof, including all equipment or trade accessories (except tires) supplied by the Motor Vehicle Manufacturer, which shall, within ninety (90) days after making delivery of such vehicle to the original purchaser or before such vehicle has been driven four thousand (4,000) miles, whichever event shall first occur, be returned to it with transportation charges prepaid, and which its examination shall disclose to its satisfaction to have been thus defective; this warranty being expressly in lieu of all other warranties expressed or implied and of all other obligations or liabilities on its part, and it neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of its vehicles.

> "This warranty shall not apply to any vehicle which shall have been repaired or altered outside of an authorized (Chrysler Dealer) service station in any way so as, in the judgment of the Manufacturer, to affect its stability or reliability, nor which has been subject to misuse, negligence or accident."

By its terms the foregoing warranty is limited to a period of ninety days or four thousand miles whichever event shall first occur. Petitioner's obligation under the warranty is further expressly limited solely to replacement at the factory of a defective part or parts which have been returned to the factory, freight prepaid. This contrasts with the warranty extended by the dealer to his customers which includes labor charges in addition to replacement parts.

In practice, however, petitioner has not required strict adherence to the terms of the warranty. Despite the lack of any contractual obligation or warranty requirement, petitioner has made cash payments or issued credit to dealers who, in order to promote business and good will for the dealer and for petitioner's products, made adjustments and repairs for customers subsequent to the expiration of the specified warranty period. Petitioner's estimated costs of satisfying warranty claims and making allowances pursuant to its policy of post-warranty adjustments are taken into consideration in determining the sales price of vehicles to its dealers and distributors.

In the actual administration of its warranty obligations and its policy of post-warranty adjustments, petitioner does not require that defective parts be repaired or replaced at its factory. Rather, it simply makes cash payments to or credits its dealers and distributors with allowances for the settlement of claims made during the warranty period or settled pursuant to its policy of post-warranty adjustments. This arrangement results in a profit to the dealer since the

cash or credit allowance for the defective part is computed at the dealer's cost for an individual unit rather than his cost for a wholesale lot. No freight costs are incurred by the dealer and the payment or credit includes an amount equal to a percentage of the labor costs which would be incurred by the dealer computed at the dealer's current established retail labor rate. This percentage varied from 60% to 100% during the period involved in this suit.

From April 16, 1950 to December 31, 1955 the cash payments made and credits allowed for all warranty and post-warranty claims amounted to $79,838,181.53. Petitioner claimed and still claims a refund of taxes on the ground that such cash payments and credits represented price readjustments within the meaning of Sections 3443(a)(2) and 6416(b)(1) of the 1939 and 1954 Codes, respectively. Petitioner filed timely claims for refund for such taxes, but these claims were never formally acted upon by the Commissioner of Internal Revenue. Petitioner's petition for a refund in the United States Court of Claims under 28 U. S. C., Section 1491, was dismissed on defendant's motion for judgment on the pleadings on the basis of prior decisions by that Court in *General Motors Corp. v. United States*, 147 F. Supp. 739; 163 F. Supp. 854, cert. den., 358 U. S. 166 and *Ford Motor Co. v. United States*, 156 F. Supp. 554, cert. den., 358 U. S. 884.

The question of law which petitioner requests this Court to review has not yet been passed upon on the merits by any Federal District Court. However, petitioner has commenced an action in the United States District Court for the Eastern District of Michigan for a refund of taxes based upon a theory of law similar to that advanced by petitioner in the Court of Claims herein but for a different tax year.

Reasons Why the Writ Should Be Granted

A. The relevant decisions of the Court of Claims have brought confusion to an important area of Federal Law and are in conflict with long established principles of common law.

Petitioner is entitled to a credit or refund if the warranty and post-warranty charges paid or credited to its dealers constitute discounts, rebates or allowances within the meaning of Sections 3443(a)(2) of the 1939 Code and 6416(b)(1) of the 1954 Code. Whether or not a warranty payment can be a "discount, rebate or allowance" has been argued extensively before the Court of Claims. Depending on its changing view of the law, the Court of Claims has answered yes, no and only under certain limitations. Finally, in the third and fourth *Frigidaire* decisions, *General Motors Corp.* v. *United States*, 147 F. Supp. 739 and 163 F. Supp. 854, cert. den. 358 U. S. 166, the Court of Claims held that expenses incurred by a manufacturer under a customary five-year warranty could not be allowances or readjustments of the price on which the excise tax was based. The rule now appears to be that such expenses or payments, as in the *Ford* case, *Ford Motor Co.* v. *United States*, 156 F. Supp. 554, cert. den. 358 U. S. 884, are nothing more than sums spent by a manufacturer in fulfilling an obligation to its purchasers to deliver an article free from defects. Such a rule, we respectfully submit, reveals a misconception of the obligations owed by a manufacturer to its dealers and distributors and demonstrates a misunderstanding of the ordinary rules of law applicable to breach of warranty.

The implied warranties which would otherwise apply to a sale of merchandise are specifically excluded by the terms of the express warranty herein. Thus, insofar as petitioner has any obligations in warranty to its dealers and distributors, they arise under and are limited by the terms of its express warranty. Petitioner's policy of not insisting on strict adherence to the terms thereof creates no obligations on its part. Its policy may be changed, extended or with-

drawn unilaterally. Its express warranty, in contrast, sets the level of its obligation below which it may not fall. The warranty does not preclude petitioner from granting more than it must.

Petitioner has a right to refuse all warranty claims made after 90 days from the date of purchase from a dealer or 4,000 miles of use, whichever event occurs sooner. Instead, however, if a dealer in his discretion elects to honor his customers' claims made after expiration of the warranty, petitioner, as a matter of policy, will also honor such claims by the dealer.

Petitioner has a right to insist that all parts claimed to be defective be shipped, freight prepaid, to its factory for examination and replacement. It does not so insist and in fact this rarely happens.

Petitioner has a right to limit its obligation to replacement of defective parts. Instead, it also gives cash payments and credits for labor costs as well. The dealers make a profit on their warranty and post-warranty services since they are reimbursed by the manufacturer at a rate in excess of their actual expenses for parts replacement and necessary labor costs.

The foregoing distinctions between petitioner's enforceable duties and its voluntary practices were evidently given no weight by the Court of Claims. Yet, in light of these distinctions, it is clear that the principles of the third and fourth *Frigidaire* decisions and the *Ford* case, said to be controlling by that Court, simply do not apply.

In the third *Frigidaire* case, *General Motors Corp.* v. *United States*, 147 F. Supp. 739, at p. 742, the Court states:

> "The sales price was for an article free of defects. The cost of remedying defects that later appeared, therefore, cannot be an 'allowance' to the purchaser to be deducted from the sales price. It was not an 'allowance', but a sum spent to give the purchaser what the manufacturer had represented it was selling him, to wit, a sound article."

Similarly, in *Ford Motor Co.* v. *United States*, 156 F. Supp. 554 at p. 555, the Court stated:

> "The sales price was for an article free of defects. The sums spent for correcting defects were to fulfill the seller's part of the bargain, to deliver a sound article."

This is a grossly inadequate statement of what "the seller's part of the bargain" is. While it is of course correct that the express warranty from petitioner to its dealers states the "Manufacturer warrants each new motor vehicle manufactured by it to be free from defects . . .", this statement cannot be lifted from its context in order to ignore the explicit limitations on the warranty, which follow. The question is not simply whether the petitioner warrants its automobiles to be free from defects but what its obligations are in the event that some of the vehicles nevertheless prove defective. The limitations of liability in such event were ignored by the Court.

In the *Ford* case, *supra*, the Court stated:

> "The dealer, who was the purchaser from the manufacturer, neither lost anything nor gained anything on account of remedying the defects. Therefore, there could not have been a rebate or allowance to him." 156 F. Supp. at p. 555.

As discussed above, that is not the case herein. Petitioner's dealers gain the difference between what it costs them to remedy defects and the amount they are paid or credited by petitioner for this work. If the test to be applied is whether or not the dealers gain as a result of warranty and post-warranty payments, then clearly petitioner's dealers receive a rebate or allowance within the meaning of the 1939 and 1954 Codes.

With particular reference to post-warranty payments, the Court in the *Ford* case, *supra*, stated:

> "The character of these expenditures does not differ from the others. They were made in a liberal

> interpretation of the obligation of the seller to deliver a sound article, as an agreed extension of its obligation under the warranty . . . . After the expenditures were made, the contractor got no more than he had paid for, to wit, a sound article; he certainly did not get back any part of the purchase price." 156 F. Supp. at p. 555.

Evidently the Court of Claims felt that the post-warranty payments in the *Ford* case were not voluntary but rather resulted from an agreed extension of the obligations of *Ford* under its express warranty. Since in *Ford*, as here, judgment was granted for defendant on the pleadings, we know of no facts before the Court on which such a conclusion could rest. In any event there is no basis herein for a finding that petitioner has an obligation, that is, an enforceable duty, to make post-warranty payments to its dealers.

The Court of Claims apparently did not deem it necessary to hear evidence in this case. Instead, the Court evidently proceeded on the basis of judicial notice and a series of assumptions, some of which, as discussed above, do not fit the facts which could be established herein.

Had petitioner been permitted to offer evidence before a Commissioner of the Court of Claims, it would be shown that during the period April 16, 1950 to December 31, 1955 petitioner made payment and granted credits to dealers as follows:

	[illegible]	[illegible]	Total
For Labor	$21,084,760.14	$11,249,625.14	$32,334,385.28
For Parts	25,283,647.19	22,220,149.06	47,503,796.25
Total	$46,368,407.33	$33,469,774.20	$79,838,181.53

Petitioner submits that the only expenditure made by it which could conceivably be claimed to have been made in discharge of a contractual obligation to give its vendees defect-free vehicles was $25,283,647.19, the portion representing

cost of parts. The balance of $54,554,534.34 paid by plaintiff to its vendees was in excess of any amount plaintiff was required to pay under its express and exclusive warranty.

By assuming that obligations exist where none exist and extending obligations which do exist, the Court of Claims fell into error which might well have been avoided by permitting petitioner to establish the facts. Petitioner has no general obligation to provide defect free vehicles. To the contrary, it has only the limited and exclusive obligations arising under its express warranty. This the Court of Claims has never granted and in refusing, it has confused petitioner's policies with its obligations or, in short, its rights with its duties. Not only has the Court below misconceived petitioner's obligations to its dealers, it has also failed to recognize and apply the ordinary rules of law concerning breach of warranty.

A sale of goods, coupled with a warranty, for a stated price followed by a breach of warranty and a price adjustment, forms the outline of a familiar pattern in the law of sales. It is applicable here. Petitioner sells its vehicles with a warranty to its dealers for a certain price. The dealer then resells the vehicle with his own warranty to a customer for a higher price which includes his profit. It next appears after use that the vehicle is defective — perhaps within the warranty period or perhaps not. The customer brings the vehicle to the dealer, complains, and the dealer repairs it at no cost to the customer. The dealer then advises petitioner that the automobile he purchased for $2,000 and resold for $2,500 has required repairs attributable to factory defects. The dealer describes the nature of the defect, and the labor and parts required to remedy it. Petitioner sends the dealer a check for the repair job in an amount in excess of the actual cost to the dealer. Petitioner no longer can show income of $2,000 from the sale of an automobile. The net price received by petitioner is $2,000 less the amount of the payment to the dealer. The

dealer paid $2,000; then he paid for parts and labor to remedy the defect; but lastly he received a check from petitioner more than equal to his costs for parts and labor. Only by resort to artificial concepts relating more to preservation of revenue than to the law of warranty can one avoid the obvious conclusion that the check from petitioner was an allowance resulting in an adjustment of price. This is generally understood in the law of sales and the intention must be attributed to Congress that, in enacting a taxing statute dealing with sales, the technical language used in it [illegible] the words take on the same meaning as generally understood in the law of sales. Thus, in dealing with price readjustments, discounts, rebates and allowances it is incumbent on the parties and the Court, to consider the meaning of such terms in ordinary commercial transactions.

Section [illegible] of the Uniform Sales Act provides, in part:

"Sec. [illegible]. Remedies for Breach of Warranty.

"(1) Where there is a breach of warranty by the seller, the buyer may at his [illegible]

"(a) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;"

[illegible]

This concept had its origin in the common law and is discussed at length in 2 Williston on Sales, Rev. Ed. [illegible]. The doctrine of recoupment in a suit for the purchase price is in essence the substitution of a quasi-contractual relationship. Williston states: "By means of recoupment the defendant is allowed to avoid the contract which was made and the price in its stead a quasi-contractual obligation for the value of what he has received."

Section [illegible] of the Uniform Sales Act states:

"(2) The measure of damages for breach of warranty is the loss directly and naturally resulting, in

the ordinary course of events, from the breach of warranty.

"(2) In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty."

The contract price is generally accepted as the value of the goods had they conformed to the warranty. *Ritter v. Eglick*, 152 F. 2d 181; *Pasquinelli v. Southern Macaroni Mfg. Co.*, 272 Pa. St. 468, 116 A. 372; *International Motor Co. v. Oldfield*, 134 Md. 207, 106 A. 611. Consequently, in the usual case, the buyer is entitled to the difference between the contract price and the value of the defective goods.

This concept of price readjustment or abatement as the remedy for breach of warranty is also discussed at length in 46 Am. Jur., Sales, § 724. It is there stated:

"§ 724. Assertion by Way of Recoupment or Counterclaim. It is well settled that in case of a breach of warranty the buyer may as a general rule set up by way of recoupment or counterclaim the resulting damages in reduction of the seller's recovery for the price without returning or offering to return the property, and without notifying the seller of its defects. The basis of the rule is that the law does not require a party to pay for an imperfect and defective article the price stipulated for a perfect one, and, when the price is demanded, will allow him to deduct the difference between that price and the value of the inferior work, and also the amount of any direct damages flowing from existing defects, not exceeding the demand of the plaintiff. This is a rule of strict justice, and the deduction is allowed in a suit upon the contract to prevent circuity of action."

The payment or credit granted by petitioner to a vendee is in legal concept the anticipation, and an extension, of

the damages or recoupment to which the vendee would be entitled for breach of warranty and as such represents an abatement or rebate of the original price; and petitioner submits that such payments should have the same character for determining "price", and readjustments thereof, for purposes of the manufacturers' excise tax.

B. The question of law presented herein is of general importance and its application affects a substantial portion of American industry.

It is common knowledge that a large part of the hard goods produced in this country is sold under a manufacturer's warranty. In addition to automotive vehicles, products such as power mowers, refrigerators, air conditioners and many other electrical and mechanical items are sold under express warranties. Consequently, a substantial portion of American industry has an interest in a definitive declaration of the law in this area.

In the first *Frigidaire* case, *General Motors Corp.* v. *United States*, 121 F. Supp. 932, the Court of Claims held that warranty costs were allowances under the Code and therefore the plaintiff was entitled to a refund. This Court denied a petition for a writ of certiorari, 348 U. S. 942 (1955).

The third *Frigidaire* case, *General Motors Corp.* v. *United States*, in two reported decisions, 147 F. Supp. 739 and 163 F. Supp. 854, reversed the rule of the first case and held that warranty costs could not qualify as allowances under the Code. Again this Court denied a petition for a writ of certiorari, 358 U. S. 166 (1958).

There are no circuit court decisions on the question presented herein. As a result, although the Court of Claims has held first in favor of and then against the position urged by petitioner, this question has never been reviewed. The state of the law in this area should be clarified and

definitively stated. This question of federal law is of general importance to many taxpayers other than petitioner. With all respect, we submit that the question presented merits the attention of this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

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Of Counsel

APPENDIX A

Relevant provisions of the Internal Revenue Code of 1954

Chapter 32—Manufacturers Excise Tax.

Sec. 4061. Imposition of Tax.

(a) *Automobiles.*—There is hereby imposed upon the following articles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof) sold by the manufacturer, producer, or importer a tax equivalent to the specified percent of the price for which so sold:

(4) Articles taxable at 8 percent, • • •

Automobile truck chassis.

Automobile truck bodies.

Automobile bus chassis.

• • •

Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

• • •

(2) Articles taxable at 10 percent • • •

Automobile chassis and bodies other than those taxable under paragraph (1).

• • •

(b) *Parts and Accessories.*—There is hereby imposed upon parts or accessories • • • for any of the articles enumerated in subsection (a) sold by the manufacturer, producer, or importer a tax equivalent to 8 percent of the price for which so sold, • • •

(26 U. S. C. 1952 ed., Supp. II, Sec. 4061).

Sec. 4216. Definition of Price.

(a) *Containers, Packing, and Transportation Charges.*—In determining • • • the price for which an article is sold, there shall be included any charge for coverings and containers • • •, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the

amount of tax imposed by this chapter, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Secretary or his delegate in accordance with the regulations.

(b) *Constructive Sale Price.*—If an article is——

(1) sold at retail,

(2) sold on consignment, or

(3) sold (otherwise than through an arm's length transaction) at less than the fair market price, the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary or his delegate.

(26 U. S. C. 1952 ed., Supp. II, Sec. 4216).

SEC. 6416. CERTAIN TAXES ON SALES AND SERVICES.

(b) *Special Cases in Which Tax Payments Considered Overpayments.*—Under regulations prescribed by the Secretary or his delegate credit or refund, without interest, shall be made of the overpayments determined under the following paragraphs:

(1) *Price Readjustments.*—If the price of any article in respect of which a tax, based on such price, is imposed by chapter 31 or 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate or allowance, the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment.

(26 U. S. C. 1952 ed., Supp. II, Sec. 6416).

Relevant Regulations

Regulations 46, Sec. 316.13 Discounts and adjustments, generally.

(a) Readjustments in sale price (such as allowable discounts, rebates, bonuses, etc.) can not be anticipated. * * * However, if the price upon which the tax was computed is subsequently readjusted, a proper credit may be taken against the tax due on a subsequent return, or an appropriate claim for refund may be filed. * * *

(b) Where articles are sold over a period of time under an agreement for a quantity rebate, or an agreement for a so-called wholesale bonus, and an adjustment in price is actually allowed in accordance with such agreement, the tax may be adjusted in the return for the month in which the price is finally determined, or a claim for refund may be filed. * * *

(c) Where articles are sold under an agreement which provides for a rebate in the case of a price reduction applicable to articles remaining unsold in the hands of a dealer, and a rebate is made in accordance with such agreement, a corresponding adjustment of tax paid may be effected through a credit or claim for refund. * * *

(d) * * * allowances, payments or adjustments made to persons other than the manufacturer's vendee are not deductible from the sale price under any conditions for purposes of computing the tax.

APPENDIX B

IN THE UNITED STATES COURT OF CLAIMS

105-56 *Philco Corporation*
168-56 *Chrysler Corporation*
216-56 *Whirlpool-Seeger Corporation*
v. *The United States*

ORDER

These cases come before the court on defendant's motions for judgment on the pleadings, together with plaintiff's responses thereto and the oral argument of counsel. Upon consideration thereof, and upon the basis of the decisions by this court in *General Motors Corp.* v. *United States*, No. 55-56, decided January 16, 1957 and July 16, 1958, and *Ford Motor Co.* v. *United States*, No. 231-56, decided December 4, 1957; certiorari denied in both cases on October 20, 1958,

IT IS ORDERED this seventeenth day of April, 1959, that defendant's motions for judgment on the pleadings be and the same are granted, and plaintiffs' petitions are dismissed.

BY THE COURT
MARVIN JONES
Chief Judge

FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 13 1959
JAMES R. BROWNING, Clerk

No. 394

In the Supreme Court of the United States

October Term, 1959

CHRYSLER CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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CHARLES K. RICE,
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In the Supreme Court of the United States

October Term, 1959

No. 394

CHRYSLER CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The basic question presented by this case is whether amounts expended by a manufacturer of automobiles in fulfilling a warranty of its products or in correcting defects in such products constitute readjustments of the sale price within the meaning of § 3443(a)(2) of the Internal Revenue Code of 1939 and § 6416(b)(1) of the 1954 Code, and thus entitle the taxpayer to a proportionate refund of the excise tax previously paid on the sales. In prior decisions the Court of Claims has held that costs incurred in fulfilling a

manufacturer's warranty against defects in the product sold constitute not readjustments of the sale price but expenditures made to fulfill the manufacturer's obligation to give the purchaser that which the manufacturer had represented it was selling, namely, an article free from defects. *General Motors Corp., Frigidaire Div.* v. *United States*, 147 F. Supp. 739; *General Motors Corp., Frigidaire Div.* v. *United States*, 163 F. Supp. 854, certiorari denied, 358 U. S. 866; *Ford Motor Co.* v. *United States*, 156 F. Supp. 554, certiorari denied, 358 U.S. 864. It was on the authority of those decisions, which this Court recently declined to review, that the judgment below was entered. See also *Philco Corp.* v. *United States*, petition for a writ of certiorari pending, No. 221, this Term.

As the Court of Claims has consistently held, an expenditure made by a manufacturer to correct defects in an article sold is not a change in the sale price but simply a cost arising from the obligation assumed by the manufacturer as part of the sale to deliver an article which is in sound condition and free from defects. In making repairs to a defective article, or in reimbursing others for such repairs, the manufacturer has not "refunded or credited" any part of the sale price within the meaning of the statute, but has merely expended sums to place the article sold in the condition in which it was represented to be at the time of delivery. The alleged "confusion" which the taxpayer claims (Pet. 8, 15) to have been engendered by prior decisions of the Court of Claims (*General Motors Corp., Frigidaire Div.* v. *United States*, 121 F. Supp. 932, certiorari denied, 348 U. S. 942; *Gen-*

eral Motors Corp., Frigidaire Div. v. *United States*, 146 F. Supp. 220) does not exist. Not only were those decisions expressly overruled by the later *Frigidaire* decisions, *supra*, but they turned solely on the effect of a separate charge for an extended warranty, an aspect not involved here. On the precise question here—whether expenditures incurred in fulfillment of the usual manufacturer's warranty constitute readjustments of the sale price—the views of the Court of Claims have never varied.

The fact that the taxpayer may have made expenditures beyond those required by the express terms of its warranty, or may have undertaken to correct defects which became apparent after the normal warranty period had expired, does not distinguish the case. As the taxpayer admits (Pet. 10-11), the same issue was involved in *Ford Motor Co.* v. *United States*, *supra*. Whether the expenditures were required by an enforceable legal obligation or only by sound business practices is not controlling; in either event, they were but the costs of delivering what the purchaser reasonably expected for his money, an article free from defects. What the purchaser receives, in turn, is but the sound article he paid for, not a refund of any part of the purchase price.

The decision below is correct and there is admittedly (Pet. 15) no conflict. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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